IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2728 of 2000 (O&M)
Date of decision: October 26, 2006.

Nasru

...**Appellant**

v.

Siri Chand & Anr.

...**Respondent(s)**

Present: Shri Alok Jain, Advocate for the applicant-appellant.

Shri Sudhir Aggarwal, Advocate for the respondents.

Surya Kant, J.

C.M. No.4434-C of 2005

After hearing Learned Counsel for the parties and for the reasons mentioned in the application, the same is allowed; the regular second appeal is restored to its original number and file.

With the consent of Learned Counsel for the parties, the main case is taken up on board for final disposal.

CM stands disposed of.

Re: Appeal

This regular second appeal is preferred by the plaintiff whose suit for declaration to the effect that he has become owner in possession of the agricultural land measuring 9 kanals 1 marla, fully descripted in the head-note of the plaint and situated within the revenue estate of village Kiranj, Tehsil Nuh, District Gurgaon, has been dismissed by both the courts.

Briefly stated, the appellant's case before the courts below was that the brother of his father, namely, Ramjani was co-owner in the suit property to the extent of half share and since the said Ramjani died issueless, mutation of his inheritance was sanctioned in the name of the appellant-plaintiff. The appellant, thus, claimed to have become owner in possession of the entire suit property as, according to him, since the time of his fore-fathers, they have acquired occupancy rights under sections 5,6,7,8 and 10 of the Punjab Tenancy Act. The appellant averred that after passing of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, he and his predecessors-in-interest having remained in possession of the subject land and, thus, they have become absolute owners in possession thereof.

The above stated claim of the appellant was contested by the respondents. Apart from various preliminary objections, they denied that the appellant or his predecessors-in-interest have become owners in possession of the suit land. The respondents took a specific plea that the appellant is in possession over the suit property in the capacity of a licensee only. A counter claim was also filed by the respondents for passing a decree for possession in their favour on the ground that the suit property was given to the ancestors of the appellant in order to manage it in the capacity of licensee(s).

On the basis of the pleadings, the learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession over the suit property mentioned in para No.1 of the plaint? OPP

2. whether the plaintiff has no locus-standi to file the

present suit by his own act and conduct? OPD

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD

5. Whether the defendants are legally entitled to take the possession of the suit property? OPD

6. Relief.

Both the parties led oral as well as documentary evidence. On a consideration of the appellant's evidence, particularly the revenue records for the years 1961-62 (Ex.P7), 1966-67 (Ex.P6), 1971-72 (Ex.P5), 1976-77 (Ex.P4), 1986-87 (Ex.P2) and 1991-92 (Ex.P3) as well as the mutation of inheritance of Ramjani dated 8th April, 1984 (Ex.P8), both the courts have concurrently found that as per entries in the revenue record, the appellant and his predecessor-in-interest have remained in possession of the suit property in their capacity as "*Gaur Marausi*" and "*Bashra malkaan*", i.e. a tenant at will without paying any rent. The courts have further held, and rightly so, that in order to acquire "occupancy rights" in respect of an agricultural land, it was imperative upon the appellant to prove that he or his predecessor-in-interest were ever inducted as tenants over the suit property. No such evidence has been led by the appellant. The appellant does not claim himself to be a tenant over the suit property at any point of time. Similarly, he has admitted that he or his predecessor-in-interest never occupied the suit land as tenants. In this view of the matter, and having regard to the appellant's own admission coupled with the fact that the above said findings are pure and simple findings of fact which do not give rise to

any substantial question of law requiring consideration by this court, I do not find any merit in this appeal, which is accordingly dismissed.

No order, however, as to costs.

October 26, 2006. [**Surya Kant**]
kadyan **Judge**